

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 100634-U

Filed 10/12/11

NO. 4-10-0634

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
REGGIE E. MILES,	)	No. 89CF132
Defendant-Appellant.	)	
	)	Honorable
	)	Michael D. Clary,
	)	Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The court granted appointed counsel's motion to withdraw under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), and affirmed the trial court's judgment agreeing with counsel's conclusion no meritorious issues could be raised on appeal as to whether (1) the trial court erred in relying on defendant's criminal history when it imposed extended-term sentences; (2) the State failed to notify defendant it intended to seek extended-term sentences on some of the charges, rendering him unable to properly prepare a defense; and (3) defendant's consecutive sentences exceeded the maximum aggregate sentence allowed by statute.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal because no meritorious issues can be raised in this case. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 1990, a jury convicted defendant, Reggie E. Miles, of two counts of home invasion (Ill. Rev. Stat. 1989, ch. 38, par. 12-11) (counts I and II), five counts of aggravated

criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, par. 12-14(a)(1)) (counts III, IV, V, VI, and VII), one count of criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, par. 12-13(a)(1)) (count VIII), one count of aggravated unlawful restraint (Ill. Rev. Stat. 1989, ch. 38, par. 10-3.1) (count IX), one count of armed robbery (Ill. Rev. Stat. 1989, ch. 38, par. 18-2(a)) (count X), and two counts of residential burglary (Ill. Rev. Stat. 1989, ch. 38, par. 19-3(a)) (counts XI and XII). In July 1990, the trial court sentenced defendant to 120 years in prison: 30 years' imprisonment on count I, consecutive to 30 years' imprisonment on count IV, consecutive to 30 years' imprisonment on count X, consecutive to 30 years' imprisonment on combined counts XI and XII, with a concurrent 8-year sentence on count IX, the only count the court found extended-term eligible. The court found the convictions on all other counts merged with the counts for which it imposed sentences.

¶ 5 In July 1990, defendant appealed the trial court's judgment, arguing (1) the court erred in admitting (a) unreliable deoxyribonucleic acid (DNA) identification evidence and (b) expert testimony regarding the statistical likelihood of another African-American sharing a DNA match with defendant, (2) he received ineffective assistance of counsel where defense counsel failed to introduce expert testimony challenging the State's DNA evidence, (3) his sexual-assault conviction must be vacated because the jury instructions failed to specify a mental state, and (4) the court erred in imposing (a) extended-term sentences on his aggravated-unlawful-restraint and residential-burglary convictions and (b) consecutive sentences for home invasion, armed robbery, and residential burglary because they were part of the same course of conduct.

¶ 6 In August 1991, this court affirmed the trial court's judgment but found the court erred in sentencing defendant to extended-term sentences for aggravated unlawful restraint and

residential burglary and remanded for resentencing. *People v. Miles*, 217 Ill. App. 3d 393, 402-10, 577 N.E.2d 477, 483-88 (1991).

¶ 7 In June 1992, the trial court entered a corrected sentencing judgment (1) clarifying its intention to sentence defendant to consecutive 15-year nonextended-term sentences on counts XI and XII, rather than a combined 30-year sentence as the original sentencing judgment had stated, and (2) reducing defendant's sentence on count IX from an 8-year extended-term sentence to a nonextended 5-year sentence. Defendant's consecutive sentences still totaled 120 years.

¶ 8 In January 2001, defendant filed a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2000)). In his petition, defendant argued the trial court erred in considering his criminal history in imposing extended-term sentences, citing *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000). In March 2001, the court dismissed defendant's postconviction petition. Defendant appealed. OSAD was appointed and moved to withdraw. This court granted OSAD's motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), finding no meritorious issues could be raised on appeal. *People v. Miles*, No. 4-01-0363, slip order at 3-4 (January 30, 2004) (unpublished order under Supreme Court Rule 23).

¶ 9 In February 2005, defendant filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2004)), arguing his consecutive sentences were void because they violated section 5-8-4 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-4 (West 2004)). Later in February, the trial court dismissed defendant's petition, and defendant appealed. In May 2007, this court affirmed the

trial court's judgment. *People v. Miles*, 4-05-0231, slip order at 3-4 (May 22, 2007)

(unpublished order under Supreme Court Rule 23).

¶ 10 In March 2008, defendant filed the instant section 2-1401 petition for relief from judgment, arguing (1) the trial court erred in relying on his criminal history when it imposed extended-term sentences; (2) the State failed to give him notice it intended to seek extended-term sentences on some of the charges, rendering him unable to properly prepare a defense; and (3) his consecutive sentences exceeded the maximum aggregate sentence allowed by statute. In April 2008, the court dismissed defendant's petition on jurisdictional grounds. In May 2008, the court dismissed defendant's motion to reconsider. Defendant appealed. In October 2008, this court remanded the matter for further consideration of the petition on its merits. *People v. Miles*, 4-08-0468 (October 1, 2008) (appeal dismissed on motion of appellant and cause remanded for further consideration). In July 2010, the trial court dismissed defendant's petition, finding it frivolous and patently without merit. In August 2010, defendant filed the instant appeal, and OSAD was appointed.

¶ 11 In July 2011, OSAD moved to withdraw, including in its motion a brief in conformity with the requirements of *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by August 8, 2011. Defendant filed none. After examining the record and executing our duties in accordance with *Finley*, we grant OSAD's motion and affirm the trial court's judgment.

¶ 12 II. ANALYSIS

¶ 13 OSAD argues this appeal presents no meritorious claim upon which defendant

could realistically expect to obtain relief. We agree.

¶ 14 OSAD first argues no meritorious argument can be made the trial court erred in relying on defendant's criminal history when sentencing him to extended-term sentences.

Defendant originally received an 8-year extended-term sentence on his aggravated-unlawful-restraint conviction and a 30-year sentence on his residential-burglary convictions; however, this court vacated the sentences and remanded for resentencing. *Miles*, 217 Ill. App. 3d at 407, 577 N.E.2d at 486. On remand, the court reduced the 8-year extended-term sentence for aggravated unlawful restraint to a 5-year nonextended term and the 30-year sentence for residential burglary to consecutive 15-year nonextended terms. Neither of the reduced sentences is extended-term. Because the court's initial error in sentencing defendant has been corrected and he no longer is subject to extended-term sentences, we agree with OSAD no meritorious argument can be made regarding this issue.

¶ 15 We note OSAD raises the possibility defendant intended to argue the trial court erred in relying on his criminal history in imposing *consecutive* sentences, rather than extended-term sentences. As OSAD points out, defendant challenged his consecutive sentences on direct appeal. On appeal, this court affirmed defendant's consecutive sentences and stated his criminal history supported the trial court's judgment. *Miles*, 217 Ill. App. 3d at 408-10, 577 N.E.2d at 487-88. We agree with OSAD no meritorious issue can be raised regarding this issue.

¶ 16 OSAD next argues no meritorious argument can be made the State failed to give defendant notice it intended to seek extended-term sentences on some of the charges against him. The version of section 111-3(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(c) (West 2008)) in effect when defendant filed his March 2008 petition required the individual

charged be notified by the State if it sought an enhanced sentence. However, the version of section 111-3 in effect in May 1989 when the State charged defendant did not require notice of its intent to seek an enhanced sentence. See Ill. Rev. Stat. 1989, ch. 38, par. 111-3. In addition, defendant's extended-term sentences were vacated by this court on direct appeal. We agree with OSAD no meritorious arguments can be made regarding this issue.

¶ 17 Finally, OSAD argues no meritorious argument can be made defendant's consecutive sentences exceed the maximum sentence allowed under section 5-8-4(c)(2) of the Unified Code (Ill. Rev. Stat. 1989, ch. 38, par. 1005-8-4(c)(2)). Under section 5-8-4(c)(2) of the Unified Code (Ill. Rev. Stat. 1989, ch. 38, par. 1005-8-4(c)(2)), "the aggregate of consecutive sentences shall not exceed the sum of the maximum terms authorized under Section 5-8-2 for the 2 most serious felonies involved"; and under section 5-8-2(a)(2) of the Unified Code (Ill. Rev. Stat. 1989, ch. 38, par. 1005-8-2(a)(2)), the maximum extended-term sentence for a Class X felony is 60 years. In the instant case, the jury convicted defendant of multiple Class X felonies; thus, the maximum aggregate of defendant's consecutive sentences could not exceed 120 years, which is the sentence defendant received. Because defendant's sentence did not exceed the 120-year-statutory limit, we agree with OSAD no meritorious argument can be made regarding this issue.

¶ 18 III. CONCLUSION

¶ 19 After reviewing the record consistent with our responsibilities under *Finley*, we agree with OSAD defendant failed to raise any meritorious issues in his appeal, and we grant OSAD's motion to withdraw as counsel for defendant and affirm the trial court's judgment.

¶ 20 Affirmed.